

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NAYQUAN JOHNSON

Plaintiff,

Case No.:

COMPLAINT

-against-

THE CITY OF NEW YORK,
POLICE OFFICER TAU SAMUEL,
and DETECTIVE JOHN DOE

Defendants.

JURY TRIAL DEMANDED

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Plaintiff, NAYQUAN JOHNSON, by his attorney, Alexis G. Padilla, Esq., complaining of the defendants, the CITY OF NEW YORK, Police Officer TAU SAMUEL, shield #17558 ("P.O. SAMUEL") and Detective JOHN DOE, ("JOHN DOE") upon information and belief alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil rights action in which the plaintiff, NAYQUAN JOHNSON, seeks relief for the defendants' violation of his rights as secured by the Civil Rights Act of 1871, 42 U.S.C. § 1983, and by the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution. Plaintiff seeks compensatory and punitive damages, an award of costs, interest and attorney's fees, and such other and further relief as this Court deems just and proper.

JURISDICTION AND VENUE

2. This action is brought pursuant to 42 U.S.C. § 1983 and 1988, and the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution. Jurisdiction is conferred upon this court by 28 U.S.C. §§ 1331 and 1343, this being an action seeking redress for the violation of the plaintiff's constitutional and civil rights.

3. Venue in this District is proper under 28 U.S.C. § 1391(b) and (c) in that plaintiff resides within the boundaries of the Eastern District of New York.

JURY TRIAL DEMANDED

4. Plaintiff demands a trial by jury on each and every one of his claims as pleaded herein.

PARTIES

5. Plaintiff is a United States citizen of full age residing in Kings County, New York.

6. Defendant CITY OF NEW YORK is and was at all times relevant herein a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to maintain a police department which acts as its agent in the area of law enforcement and for which it is ultimately responsible. Defendant CITY OF NEW YORK assumes the risks incidental to the maintenance of a police force and the employment of police officers. Defendant CITY OF NEW YORK was at all times relevant herein the public employer of the Defendant Police Officer.

7. Defendant Police Officer TAU SAMUEL was at all times relevant herein a duly appointed and acting officer, servant, employee and agent of the New York Police Department, a municipal agency of the City of New York. At all times relevant herein, defendant P.O. SAMUEL acted under color of the laws, statutes, ordinances, regulations, policies, customs and/or usages of the State of New York and the New York Police Department, in the course and scope of his duties and functions as an officer, agent, servant and employee of the City of New York, was acting for, and on behalf of, and with the power and authority vested in him by the City of New York and the New York Police Department, and was otherwise performing and engaging in conduct incidental to the performance of his lawful functions in the course of his duty. He is sued individually and in his official capacity.

8. Defendant Detective JOHN DOE was at all times relevant herein a duly appointed and acting officer, servant, employee and agent of the New York Police Department, a municipal agency of the City of New York. At all times relevant herein, defendant JOHN DOE acted under color of the laws, statutes, ordinances, regulations, policies, customs and/or usages of the State of New York and the New York Police Department, in the course and scope of his duties and functions as an officer, agent, servant and employee of the City of New York, was acting for, and on behalf of, and with the power and authority vested in him by the City of New York and the New York Police Department, and was otherwise performing and engaging in conduct incidental to the performance of his lawful functions in the course of his duty. He is sued individually and in his official capacity.

STATEMENT OF FACTS

9. On or about September 7, 2016 at about 9:25 P.M. in the vicinity of 61st Street on the east side of Manhattan, plaintiff was driving with his friend and girlfriend when he was cut off in traffic by defendant JOHN DOE, an off-duty police officer.¹

10. Plaintiff responded by speeding up and passing defendant's car but did not throw anything at defendant's car as defendant would later claim.

11. Defendant then sped up and pulled even with plaintiff.

12. Both parties lowered their windows and began to shout obscenities.

13. Words were exchanged between the parties.

14. Plaintiff accelerated and defendant JOHN DOE began to follow him.

15. Plaintiff pulled over on the right side of 61st Street between 2nd and 3rd Avenue.

¹ Defendant JOHN DOE is identified in the criminal complaint executed by defendant P.O. SAMUEL as a detective from the 81st precinct in Brooklyn.

16. Defendant JOHN DOE then pulled over behind him, got out of his car and approached plaintiff's car.

17. Plaintiff got out of his car and approached defendant.

18. The two continued to exchange words until defendant JOHN DOE struck plaintiff about the neck with the side of his hand in the manner of a karate chop.

19. Defendant JOHN DOE then drew a firearm from a holster on his waist and pointed it at plaintiff.

20. Plaintiff instinctively put his hands up but at no point during this sequence of events did defendant JOHN DOE identify himself as a police officer.

21. Then defendant JOHN DOE hit plaintiff again about the neck, this time with the handle of his firearm.

22. Defendant JOHN DOE's passenger, a woman, began shouting for him to get back in the car.

23. Plaintiff's girlfriend, who remained in the passenger side of their car throughout this sequence of events, dialed 911.

24. Defendant JOHN DOE then got in the car and attempted to drive away.

25. Plaintiff and his friend, who was now out of the car, attempted to stop defendant JOHN DOE from leaving the scene by standing in front of his car but he maneuvered around them and began to flee.

26. However, defendant JOHN DOE was thwarted in his attempt to flee the scene by traffic on 3rd Avenue.

27. Moments later police officers from the 19th precinct, including defendant P.O. SAMUEL, arrived on the scene.

28. The police officers questioned the parties separately.

29. Plaintiff told them that he was attacked by defendant JOHN DOE and showed the officers where there was swelling and a bruise on his neck.

30. According to a criminal complaint filed against plaintiff by defendant P.O. SAMUEL, defendant JOHN DOE told the officers arriving on the scene that plaintiff attacked him with his hands “causing substantial pain to his shoulder” and that this occurred after defendant JOHN DOE identified himself as a police officer.

31. Defendant P.O. SAMUEL relied on these statements to charge plaintiff with assault despite plaintiff’s injuries and the presence of witnesses on the scene, including employees of at least two buildings on 61st Street who told defendant P.O. SAMUEL not only that defendant JOHN DOE was the aggressor but also that he tried to flee the scene.

32. Defendant P.O. SAMUEL charged plaintiff with one count of felony assault on a police officer while defendant JOHN DOE was allowed to leave the scene and was not charged with any crime, despite plaintiff’s repeated requests to file a cross complaint against defendant JOHN DOE for assault and battery.

33. Plaintiff was taken into custody and transported to the 19th precinct station house and then eventually to central booking in Manhattan, where he was arraigned and released on his own recognizance approximately 24 hours later.

34. Plaintiff proceeded immediately to Maimonides Medical Center in Brooklyn, where he received treatment for his injuries.

35. To defend against the baseless criminal charge levied against him by defendants, plaintiff was forced to retain counsel at an out of pocket expense of five thousand dollars (\$5,000).

36. On February 1, 2017, the charge of second degree assault against plaintiff was dismissed.

AS FOR A FIRST CAUSE OF ACTION

DEPRIVATION OF FEDERAL RIGHTS UNDER 42 U.S.C. § 1983

37. Plaintiff repeats, reiterates and asserts each and every allegation contained in the previous paragraphs with the same force and effect as if fully set forth herein.

38. At all times during the events described above defendant JOHN DOE lacked probable cause to use force against plaintiff.

39. At all times during the events described above defendants lacked probable cause to arrest plaintiff.

40. At all times during the events describe above defendants lacked probable cause to charge plaintiff with criminal conduct.

41. All of the aforementioned acts of defendants were carried out under the color of state law.

42. All of the aforementioned acts deprived plaintiff of the rights, privileges and immunities guaranteed to citizens of the United States by the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States of America, and in violation of 42 U.S.C. § 1983.

43. The acts complained of were carried out by the defendants in their capacity as police officers, with all actual and/or apparent authority afforded thereto.

44. The acts complained of deprived plaintiff of his rights:

A. To be free from false arrest;

B. To be free from unwarranted and malicious criminal prosecution;

- C. To be free from deprivation of liberty without due process of law;
- D. To a fair trial; and
- E. To receive equal protection under the law.

AS FOR A SECOND CAUSE OF ACTION

MUNICIPAL LIABILITY UNDER 42 U.S.C. § 1983 AGAINST THE CITY OF NEW YORK

45. Plaintiff repeats, reiterates and asserts each and every allegation contained in the previous paragraphs with the same force and effect as if fully set forth herein.

46. The CITY OF NEW YORK directly caused the constitutional violations suffered by plaintiff, and is liable for the damages suffered by plaintiff as a result of the conduct of the police officer defendants because their conduct was a direct consequence of inadequate training and supervision of police officers by defendant CITY OF NEW YORK and its agent, the New York Police Department.

47. At all times relevant to this complaint defendant CITY OF NEW YORK through its agent, the New York Police Department, had in effect policies, practices, and customs that allow for police officers to use force, make arrests and file criminal charges without probable cause and in flagrant violation of their sworn oaths to uphold the Constitution.

48. At all times relevant to this complaint it was the policy and/or custom of the CITY OF NEW YORK to inadequately train, supervise, and discipline its police officers, thereby failing to adequately discourage reckless misadventures of the sort described in this complaint.

49. As a result of the policies and customs of the CITY OF NEW YORK and its agency the New York Police Department, police officers – including the defendants on the night of the incident in question – believe that their unconstitutional actions will not result in discipline but will in fact be tolerated.

50. The wrongful policies, practices and customs complained of herein, demonstrate a deliberate indifference on the part of policymakers of the CITY OF NEW YORK to the constitutional rights of persons within the city, and were the direct and proximate cause of the violations of plaintiff's rights alleged herein.

WHEREFORE, plaintiff demands relief jointly and severally against all of the defendants for compensatory damages in an amount to be determined by a jury; punitive damages in an amount to be determined by a jury; costs, interest and attorney's fees, and such other and further relief as this Court may deem just and proper.

Dated: 04/10/2017
Brooklyn, NY

By: /s/Alexis G. Padilla
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